

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
ROGELIO TORRES,) CASE NO. 06-62301 JPK
) Chapter 7
Debtor.)

ORDER DETERMINING DEBTOR'S MOTION TO
DETERMINE THE SCOPE OF THE AUTOMATIC STAY
WHEN A DISCHARGE IS GRANTED BUT THEN REVOKED ("MOTION")

Pursuant to the court's order entered on February 11, 2009, a hearing was held on April 17, 2009 with respect to the Motion. The debtor appears by counsel Rosalind Parr; the Chapter 7 Trustee Stacia L. Yoon appears personally; the United States Trustee appears by Trial Attorney Jennifer Prokop.

The issue before the court is the extent to which the automatic stay of 11 U.S.C. § 362(a) is affected when a debtor's discharge in a Chapter 7 case has been revoked, but the debtor's discharge has then subsequently neither been granted nor denied. The focal point of inquiry is the effect, Under 11 U.S.C. § 362(c), of a determination solely revoking the debtor's discharge.

11 U.S.C. § 362(c)(1) and (2) state the following:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12,

or 13 of this title, the time a discharge is granted or denied;

The particular form of property to which the debtor's Motion relates is post-petition wages, which were the subject of garnishment proceedings initiated subsequent to the entry of a judgment revoking the debtor's Chapter 7 discharge. Those wages never constituted property of the debtor's Chapter 7 bankruptcy estate; 11 U.S.C. § 541(a)(6). Thus, § 362(c)(1) has no relevance to the issue presented to the court. 11 U.S.C. § 362(c)(2) continues the stay in effect to the full extent of the stay provided by § 362(a) until the earliest of one of three events, none of which is applicable in the context of the matter presented to the court. The case had not been closed at the time the judgment revoking the debtor's discharge had been entered; the case had not been dismissed at that time; and the debtor's discharge had neither been granted nor denied under 11 U.S.C. § 727(a). The discharge had simply been revoked pursuant to 11 U.S.C. § 727(d), thus leaving the debtor in the position of remaining in a pending case without any action having been taken with respect to either granting or denying discharge.

The court thus determines that any action within the scope of 11 U.S.C. § 362(a) was stayed to the extent any such action would have been stayed on the date of the filing of this Chapter 7 case, despite the revocation of the debtor's discharge.

IT IS ORDERED, ADJUDGED AND DECREED that revocation of the debtor's discharge did not affect the continuation of the automatic stay of 11 U.S.C. § 362(a) in any manner.

Dated at Hammond, Indiana on May 7, 2009.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor

Trustee, US Trustee

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